

***In the Senate of the United States,***

*November 9, 1997.*

*Resolved*, That the bill from the House of Representatives (H.R. 1847) entitled “An Act to improve the criminal law relating to fraud against consumers.”, do pass with the following

**AMENDMENT:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Telemarketing Fraud*  
3 *Prevention Act of 1997”.*

4 ***SEC. 2. CRIMINAL FORFEITURE OF FRAUD PROCEEDS.***

5 *Section 982 of title 18, United States Code, is amend-*  
6 *ed—*

7 *(1) in subsection (a)—*

8 *(A) by redesignating the second paragraph*  
9 *designated as paragraph (6) as paragraph (7);*

10 *and*

11 *(B) by adding at the end the following:*

1       “(8) *The Court, in sentencing a defendant convicted*  
 2 *of an offense under section 1028, 1029, 1341, 1342, 1343,*  
 3 *or 1344, or of a conspiracy to commit such an offense, if*  
 4 *the offense involves telemarketing (as that term is defined*  
 5 *in section 2325), shall order that the defendant forfeit to*  
 6 *the United States any real or personal property—*

7               “(A) *used or intended to be used to commit, to*  
 8 *facilitate, or to promote the commission of such of-*  
 9 *fense; and*

10              “(B) *constituting, derived from, or traceable to*  
 11 *the gross proceeds that the defendant obtained directly*  
 12 *or indirectly as a result of the offense.”; and*

13              (2) *in subsection (b)(1)(A), by striking “(a)(1) or*  
 14 *(a)(6)” and inserting “(a)(1), (a)(6), or (a)(8)”.*

15 **SEC. 3. PENALTY FOR TELEMARKETING FRAUD.**

16       *Section 2326 of title 18, United States Code, is amend-*  
 17 *ed by striking “may” each place it appears and inserting*  
 18 *“shall”.*

19 **SEC. 4. ADDITION OF CONSPIRACY OFFENSES TO SECTION**  
 20 **2326 ENHANCEMENT.**

21       *Section 2326 of title 18, United States Code, is amend-*  
 22 *ed by inserting “, or a conspiracy to commit such an of-*  
 23 *fense,” after “or 1344”.*

1 **SEC. 5. CLARIFICATION OF MANDATORY RESTITUTION.**

2 *Section 2327 of title 18, United States Code, is amend-*  
 3 *ed—*

4 *(1) in subsection (a), by striking “for any offense*  
 5 *under this chapter” and inserting “to all victims of*  
 6 *any offense for which an enhanced penalty is pro-*  
 7 *vided under section 2326”; and*

8 *(2) by striking subsection (c) and inserting the*  
 9 *following:*

10 *“(c) VICTIM DEFINED.—In this section, the term ‘vic-*  
 11 *tim’ has the meaning given that term in section*  
 12 *3663A(a)(2).”.*

13 **SEC. 6. AMENDMENT OF FEDERAL SENTENCING GUIDE-**  
 14 **LINES.**

15 *(a) DEFINITION OF TELEMARKETING.—In this section,*  
 16 *the term “telemarketing” has the meaning given that term*  
 17 *in section 2326 of title 18, United States Code.*

18 *(b) DIRECTIVE TO SENTENCING COMMISSION.—Pursu-*  
 19 *ant to its authority under section 994(p) of title 28, United*  
 20 *States Code, and in accordance with this section, the United*  
 21 *States Sentencing Commission shall—*

22 *(1) promulgate Federal sentencing guidelines or*  
 23 *amend existing sentencing guidelines (and policy*  
 24 *statements, if appropriate) to provide for substan-*  
 25 *tially increased penalties for persons convicted of of-*  
 26 *fenses described in section 2326 of title 18, United*

1       *States Code, as amended by this Act, in connection*  
2       *with the conduct of telemarketing;*

3               *(2) submit to Congress an explanation of each*  
4       *action taken under paragraph (1) and any additional*  
5       *policy recommendations for combating the offenses de-*  
6       *scribed in that paragraph.*

7       *(c) REQUIREMENTS.—In carrying out this section, the*  
8       *Commission shall—*

9               *(1) ensure that the guidelines and policy state-*  
10       *ments promulgated or amended pursuant to sub-*  
11       *section (b)(1) and any recommendations submitted*  
12       *thereunder reflect the serious nature of the offenses;*

13               *(2) provide an additional appropriate sentencing*  
14       *enhancement if offense involved sophisticated means,*  
15       *including but not limited to sophisticated concealment*  
16       *efforts, such as perpetrating the offense from outside*  
17       *the United States;*

18               *(3) provide an additional appropriate sentencing*  
19       *enhancement for cases in which a large number of*  
20       *vulnerable victims, including but not limited to vic-*  
21       *tims described in section 2326(2) of title 18, United*  
22       *States Code, are affected by a fraudulent scheme or*  
23       *schemes;*

24               *(4) ensure that guidelines and policy statements*  
25       *promulgated or amended pursuant to subsection*

1       (b)(1) are reasonably consistent with other relevant  
2       statutory directives to the Commission and with other  
3       guidelines;

4           (5) account for any aggravating or mitigating  
5       circumstances that might justify upward or down-  
6       ward departures;

7           (6) ensure that the guidelines adequately meet  
8       the purposes of sentencing as set forth in section  
9       3553(a)(2) of title 18, United States Code; and

10          (7) take any other action the Commission consid-  
11       ers necessary to carry out this section.

12       (d) *EMERGENCY AUTHORITY.*—The Commission shall  
13       promulgate the guidelines or amendments provided for  
14       under this subsection as soon as practicable, and in any  
15       event not later than 120 days after the date of enactment  
16       of the Telemarketing Fraud Prevention Act of 1997, in ac-  
17       cordance with the procedures set forth in section 21(a) of  
18       the Sentencing Reform Act of 1987, as though the authority  
19       under that authority had not expired, except that the Com-  
20       mission shall submit to Congress the emergency guidelines  
21       or amendments promulgated under this section, and shall  
22       set an effective date for those guidelines or amendments not  
23       earlier than 30 days after their submission to Congress.

1 **SEC. 7. FALSE ADVERTISING OR MISUSE OF NAME TO INDI-**  
2 **CATE UNITED STATES MARSHALS SERVICE.**

3 *Section 709 of title 18, United States Code, is amended*  
4 *by inserting after the thirteenth undesignated paragraph*  
5 *the following:*

6 *“Whoever, except with the written permission of the*  
7 *Director of the United States Marshals Service, knowingly*  
8 *uses the words ‘United States Marshals Service’, ‘U.S. Mar-*  
9 *shals Service’, ‘United States Marshal’, ‘U.S. Marshal’,*  
10 *‘U.S.M.S.’, or any colorable imitation of any such words,*  
11 *or the likeness of a United States Marshals Service badge,*  
12 *logo, or insignia on any item of apparel, in connection with*  
13 *any advertisement, circular, book, pamphlet, software, or*  
14 *other publication, or any play, motion picture, broadcast,*  
15 *telecast, or other production, in a manner that is reason-*  
16 *ably calculated to convey the impression that the wearer*  
17 *of the item of apparel is acting pursuant to the legal author-*  
18 *ity of the United States Marshals Service, or to convey the*  
19 *impression that such advertisement, circular, book, pam-*  
20 *phlet, software, or other publication, or such play, motion*  
21 *picture, broadcast, telecast, or other production, is ap-*  
22 *proved, endorsed, or authorized by the United States Mar-*  
23 *shals Service;”.*

1 **SEC. 8. DISCLOSURE OF CERTAIN RECORDS FOR INVES-**  
2 **TIGATIONS OF TELEMARKETING FRAUD.**

3 *Section 2703(c)(1)(B) of title 18, United States Code,*  
4 *is amended—*

5 *(1) by striking out “or” at the end of clause (ii);*

6 *(2) by striking out the period at the end of clause*

7 *(iii) and inserting in lieu thereof “; or”; and*

8 *(3) by adding at the end the following:*

9 *“(iv) submits a formal written request relevant*  
10 *to a law enforcement investigation concerning tele-*  
11 *marketing fraud for the name, address, and place of*  
12 *business of a subscriber or customer of such provider,*  
13 *which subscriber or customer is engaged in tele-*  
14 *marketing (as such term is in section 2325 of this*  
15 *title).”.*

Attest:

*Secretary.*

105<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 1847**

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**AMENDMENT**